

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GRANVILLE MARSHALL, M.D.,

No. CV. S-04-1054 RRB KJM

Plaintiff,

Memorandum of Opinion
and Order

v.

CITY OF SUSANVILLE, COUNTY OF
LASSEN, BANNER COMMUNITY
HOSPITAL, DAVE ANDERSON, and
DOES 1 through 50, inclusive,

Defendant. _____/

Plaintiff Granville Marshall, M.D. seeks to amend his complaint against the City of Susanville and Lassen County to join individual defendants Steven South, Sherry Henderson, Debbie Runnels, and Patrick Garrity. Marshall filed the motion seven months after the court issued a pretrial scheduling order, stating that "[n]o further joinder of parties or amendments to pleadings is permitted except with leave of the court, good cause having been shown." "Rule 16(b)'s good cause standard primarily considers the diligence of the party seeking the

1 amendment." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,
2 609 (9th Cir. 1992) (citation and internal quotation marks
3 omitted). A finding of diligence is inappropriate if a
4 "[p]laintiff was aware of those circumstances [motivating the
5 amendment] when she submitted her status report and yet said
6 nothing about them." Jackson v. Laureate, Inc., 186 F.R.D. 605,
7 608 (E.D. Cal. 1999).
8

9 Marshall has not satisfied Rule 16(b)'s good cause
10 standard.¹ Marshall was aware of the names of the proposed
11 defendants and their roles in the incident at issue more than
12 three years before filing this motion, as demonstrated by his
13 September 30, 2003 letter to the Department of Justice.
14 Marshall does not allege any material factual developments since
15 the letter was sent to explain why he now seeks to join the
16 parties. Therefore, he has not established that he was diligent
17 in proposing the amendment.
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20 Despite the delay, Marshall argues that there is good cause
21 for joinder of the parties because he recently obtained new
22 counsel and joining the proposed defendants would only be a
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25 ¹ Moreover, significant prejudice would result if the court
26 were to grant the motion. Shortly after Marshall moved to amend
27 his pleadings, defendants filed timely summary judgment motions.
28 Joining the proposed defendants would derail the pre-trial
schedule, force a reopening of discovery, and likely render
extensive summary judgment work by the current defendants
irrelevant.

1 "clarification," due to prior references to them in the body of
2 the original complaint. These arguments lack merit. His desire
3 "to have a second bite at the apple" does not constitute good
4 cause. Porter v. Cal. Dep't of Corr., No. Civ. S. 00-978, 2006
5 WL 467980, at *1 (E.D. Cal. Jan. 6, 2006). Moreover, references
6 to two of the individual defendants and discussion of theories
7 of individual liability in the original complaint's body are not
8 sufficient to justify the joinder of the proposed defendants,
9 who were neither served with the original complaint nor given an
10 opportunity to participate in the action. See Silva v. County
11 of Tehama, No. Civ. S. 03-1853, 2005 WL 2709512, at *2 (E.D.
12 Cal. Oct. 20, 2005) (finding no good cause to substitute named
13 individuals for Doe defendants, mentioned in the original
14 complaint, when plaintiff knew their names for eighteen months
15 before moving to amend). Marshall unsuccessfully argues that it
16 was "obvious" that plaintiff intended to sue the proposed
17 defendants and that the original defendants should have
18 anticipated their inclusion in the action. It is Marshall's
19 burden to "prosecute his case properly" and he "cannot blame
20 [defendant] for his failure to do so." Johnson, 975 at 609-10.

21 For these reasons, the court DENIES the motion.

22 IT IS SO ORDERED this 29th day of June, 2007.

23 s/RALPH R. BEISTLINE
24 UNITED STATES DISTRICT JUDGE
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